NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of	)	
	)	
NETTIE H, INC.,	)	Appeal No. 96-0075
Appellant	)	
	)	
and	)	DECISION
	)	
KEITH T. SUGIURA and	)	
ALAN L. MELLING,	)	January 16, 1997
Respondents	)	
	)	
	)	

STATEMENT OF THE CASE

Both Appellant, Nettie H, Inc., and Respondents, Keith T. Suguira, and Alan L. Melling, claim credit for quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program for the same landings of halibut and sablefish made from the F/V NETTIE H between February of 1987 and March of 1989. Appellant claims it should receive QS credit for 100 percent of the landings made from the vessel. Respondents claim they should receive credit in proportion to their varying ownership interests in the vessel during that time period.

The vessel was owned during the relevant time period by an entity called the Nettie H Partnership, which had two partners (Appellant and Respondent Suguira) between February and November of 1987, and three (Appellant and Respondent Suguira and Respondent Melling) from then until March of 1989 when the Appellant[1] bought out the other two partners.

On May 3, 1996, the Restricted Access Management Division [Division] of the National Marine

[1]During the period at issue, Appellant's ownership interest was held by Mr. Kris Fanning. When issuing QS based on a person's former interest in a dissolved partnership, the Division will issue either in the name of the person who held the partnership interest, or in the name of an entity that existed at the time of application and through which the former partner continues to operate a commercial fishing business. At the time of application for IFQ, Mr. Fanning had transferred his interests to his wholly owned corporation, Nettie H. Inc., and though it appears there may have been some initial confusion (some forms show the applicant as the Nettie H. Partnership and some as Nettie H. Inc., and there is even a reference to Caprice, Inc.), it appears that Nettie H., Inc,. is the current entity designated by Mr. Fanning. For the purposes of this decision, the term "Appellant" applies to either Mr. Fanning or to Nettie H., Inc.

Fisheries Service issued an Initial Administrative Determination [IAD] granting Quota Share to Appellant and each of the Respondents according to their varying ownership interests in the vessel on the basis they were all successors in interest to two dissolved partnerships. The IAD also found that the Appellant did not receive the Respondents' IFQ rights when it purchased their interests in the Partnership. On May 31, 1996, the Division issued an amended IAD which corrected a mathematical error and reduced the pounds due Appellant. The new IAD otherwise affirmed the prior IAD.

Appellant filed a timely appeal of the IAD and Respondents filed a timely statement in response to Appellant's appeal. Because the relevant facts are not in dispute, a hearing was not held.[2]

ISSUES

1. Whether each change in the membership of the Nettie H. Partnership effectively caused the Partnership to dissolve and be reformed within the meaning of the IFQ program.

2. Whether Respondents lost their eligibility for QS when they transferred their interests in the Partnership to Mr. Fanning.

BACKGROUND

The Nettie H Partnership [Partnership] was formed in January of 1987[3] by two individuals, Kris Fanning and Keith Sugiura, each of whom then held a 50 percent interest. The principal asset of the Partnership was the sixty-eight foot F/V NETTIE H. On November 23, 1987, Alan Melling became a partner and the respective ownership interests in the Partnership became: Fanning, 36 percent, Sugiura, 36 percent and Melling, 28 percent. This arrangement continued until March of 1989 when both Sugiura and Melling sold out to Fanning; Melling on March 10, 1989, and Sugiura on March 21, 1989,[4] and Fanning prepared to wind up the Partnership and transfer its assets to his wholly owned

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[2]No issue has been raised on appeal regarding the Division's calculation of the overall poundage landed in each area during each of the relevant time periods. Further, Appellant does not dispute the second IAD's downward recalculation of pounds to correct a prior mathematical error. Accordingly, all mathematical calculations are presumed correct and will not be re-visited in this decision..

[3]The agreement recites no effective date. One signature is dated January 12, 1987, and the other is dated January 16, 1987. The IADs' resolution are based on landings from February 1987 onward, to which date there has been no objection. Accordingly, I presume no disputed landings were made in January of 1987.

[4]Although the Fanning, Sugiura & Melling Partnership became effective on November 23, 1987, it does not appear there were any landings between then and the end of 1987. Similarly, though this Partnership lasted until March of 1989, it does not appear there were any landings in 1989 prior to the

corporation, Nettie H. Inc.[5]

DISCUSSION

1. Whether each change in the membership of the Nettie H. Partnership effectively caused the Partnership to dissolve and be reformed within the meaning of the IFQ program.

To qualify for QS under the IFQ program, a person (including a partnership) must have owned or leased a vessel that made legal landings of halibut or sablefish during a QS qualifying year: 1988, 1989, or 1990.[6] A former partner of a dissolved partnership (who would otherwise qualify as a "person") may apply for QS in proportion to the partner's interest in the dissolved partnership.[7] The IFQ regulations do not define or explain what is meant by a dissolved partnership.

The Division concluded that when Mr. Melling bought part of the interests of the two original partners, Mr. Fanning and Mr. Suguira, on November 23, 1987, and became a partner himself, the change in partnership interests caused the original partnership to be "dissolved" within the meaning of the IFQ regulations, and to be reformed as a new partnership. Similarly, it concluded that that partnership also was dissolved in March of 1989, when Mr. Melling and Mr. Suguira sold their respective interests to Mr. Fanning.

Appellant acknowledges the changes in partnership interests, but disputes whether these changes caused the Partnership(s) to be "dissolved" within the meaning of the IFQ regulations. Appellant cites Washington State law, provisions within the Partnership agreement and the fact the abstract of title showed ownership in the Partnership itself, not in the individual partners, in support of its position.

This Office has previously ruled that the Division has the authority to reasonably interpret its own

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March divestitures. Accordingly, for practical purposes, the Fanning & Sugiura Partnership accrued QS for 1987 landings, and the Fanning, Sugiura & Melling Partnership accrued QS for 1988 landings.

[5]The U. S. Coast Guard Abstract of Title indicates the vessel was owned by the Nettie H. Partnership from January 15, 1987 until September 20, 1989, when it was transferred to Nettie H., Inc. The corporation is 100 percent owned by Appellant. The vessel was subsequently lost with all hands on September of 1993. The corporation remains in existence.

[6]*See*, 50 C. F. R. § 679.40(a)(2)(iii). Formerly 50 C.F.R. § 676.20 (a) (1). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1966). The wording of the regulation in question was unchanged by the renumbering.

[7]Id.

regulations,[8] and that the Division is not bound by private agreements.[9] In a recent case dealing with the question of when a partnership dissolves for purposes of the IFQ program, we held that the Division is not bound by particular provisions of a partnership agreement or by a particular state's partnership laws.[10] In upholding the Division's position, we stated:

> Under the IFQ program, as implemented by the Division, a partnership is "dissolved" when there is a change in partners. The Division's interpretation conforms with the Uniform Partnership Act, which recognizes that a change in partners dissolves a partnership, and creates a new partnership. It also adheres to the commonly recognized principle of partnership law that the dissolution of a partnership is not the same as the termination of one. . . . .
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> The Division's conclusion is reasonably related to an intended purpose of the IFQ program, which is to extend the initial benefits of the program to those who participated in the halibut or sablefish fishery during the QS qualifying years. Respondent was such a participant through his role in the Partnership. The provision within 50 C.F.R § 679.40(a)(2)(iii), which allows a former partner of a dissolved partnership to receive the QS benefits of the partnership, was intended for the kind of cases such as Respondent's, and I find that not treating the Partnership as dissolved would circumvent the purposes of the IFQ program. If the Partnership is not deemed dissolved, Respondent (and any former partner) would be excluded from the benefits of the IFQ program, in spite of its ownership interest in a vessel that made legal landings during the qualifying period. New partner(s) would be able to receive the benefits of QS or IFQ without either having owned or leased a vessel during a QS qualifying year, or of having met the QS or IFQ transfer and use restrictions of 50 C.F.R. §§ 679.41 and 679.42. [Footnotes omitted.][11]

I accordingly conclude that, for purposes of initial issuance of QS, each addition or subtraction of a partner constituted a dissolution (and reformation) of the Partnership, and that QS accrued to each of

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[8]*See*, David A. Cadden, Appeal No. 95-0013, decided January 17, 1996, *aff'd* January 18, 1996.

[9]*See*, Prowler Partnership v. Gainhart Samuelson, Appeal No. 95-0084, Decision on Reconsideration (Part I), March 12, 1996, at 4, *aff'd*, March 14, 1996; *appeal pending*, Prowler Partnership v. National Marine Fisheries Service, Case No. A96126CIV (D.C. Alaska, complaint filed April 10, 1996).

[10]*See*, Silver Ice Fisheries Partnership v. Arctic Select Seafoods, Inc., Appeal No. 95-0014, decided October 30, 1996, *aff'd*, November 12, 1996.

[11]Silver Ice, *supra*, at 4. Appellant also argues that it would be inconsistent to treat a partnership differently than a closely held corporation when considering "dissolution" issues. However, the two are distinctly different types of entities subject to markedly different general legal principles.

the named partners in proportion to their respective partnership interests during each of the relevant time periods.

2. Whether Respondents lost their eligibility for QS when they transferred their interests in the Partnership to Mr. Fanning.

Appellant claims that when it purchased Respondents' interests in the Partnership, in March of 1989, it acquired the rights to their initial issuance of QS.[12] This office has previously ruled that the IFQ regulations do not provide for assignments of initial QS eligibility.[13] The Division has consistently refused to recognize and enforce private agreements that purport to assign eligibility for the initial issuance of QS. The Division is not bound by the terms of any such agreement between the parties.[14] The issuance of QS is governed by the IFQ regulations, not by the terms of a private agreement.

Appellant's cites Alwert as supporting its contention that if title is in the name of a partnership, (rather than in the name of the owners as joint tenants) and the partnership survives beyond the date(s) of divestiture by all but one partner, then rights to any future QS is retained by that partnership's remaining principal (or his successor in interest). Alwert neither made nor implied any such statement. Alwert, as did Prowler before it, rejected the argument that the purchase of an interest in the vessel and the partnership included the purchase of rights to initial issuance of QS. Additionally, the same result obtained in Silver Ice Fisheries, notwithstanding the fact title was in the name of the partnership rather than the individuals.

Therefore, I conclude that the Respondents did not lose eligibility for QS when they transferred their interests in the Partnership. The Appellant must look to another forum to enforce any contractual rights it feels it may have as a result of the sale agreements.

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[12]Although there is no dispute that the transaction occurred, the document transferring Mr. Sugiura's interest to Mr. Fanning on March 21, 1989, is not of record. The document transferring Mr. Melling's interest to Mr. Fanning on March 10, 1989, merely recites that Mr. Melling's 28 percent share of certain chattels (including the F/V NETTIE H.) was sold to Mr. Fanning and that Mr. Fanning "shall indemnify and hold Mr. Melling harmless from any and all partnership obligations associated with the Nettie H. Partnership . . .." There is no mention of QS or IFQ rights.

[13]Prowler Partnership v. Samuelson, Decision on Reconsideration (Part I), *supra*; *see also*, Cadden v. Levenhagen and Pugh, Appeal No. 95-0013, January 17, 1996, *aff'd* January 18, 1996; and Alwert Fisheries, Inc. v. Oregon Seafood Producers and Dorothy L. Painter, Appeal No. 95-0073 March 21, 1996, *aff'd* March 27, 1996; and Silver Ice Fisheries Partnership v. Arctic Select Seafoods, Inc., Appeal No. 95-0114, October 30, 1996.

[14]Prowler, *supra*, at 4; Silver Ice, *supra*,at 6.

In summary, for purposes of resolving this IFQ allocation dispute, I conclude that the Division was correct in allocating the qualifying pounds according to the respective partnership shares in existence during each of the periods listed below,[15] and in holding that right to an initial issuance of QS was not transferred when Respondents transferred their interests in the partnership:

Fanning (50%) & Sugiura (50%) = [February 1987 to November 23, 1987]; and
Fanning (36%), Sugiura (36%) and Melling (28%) = [November 23, 1987 to March 10, 1989].

FINDINGS OF FACT

1. During the February 1987 to November 1987 period, the F/V NETTIE H. was owned by the Nettie H. Partnership, consisting of Appellant (50 percent) and Respondent Sugiura (50 percent).

2. During the November 1987 to March 10, 1989 period, the F/V NETTIE H. was owned by a different Nettie H. Partnership, consisting of Appellant (36 percent), Respondent Sugiura (36 percent), and Respondent Melling (28 percent).

3. On March 10, 1989, Respondent Melling sold his entire partnership interest to Appellant. On March 21, 1989, Respondent Sugiura sold his entire partnership interest to Appellant.

CONCLUSIONS OF LAW

1. The original (February - November 1987) Fanning & Sugiura Partnership was dissolved and a new Fanning & Sugiura & Melling Partnership was formed on November 23, 1987, for purposes of allocating qualifying pounds under the IFQ program.

2. The Fanning, Sugiura & Melling Partnership (November 1987 - March 1989) was dissolved on March 10, 1989, for purposes of allocating qualifying pounds under the IFQ program.

3. The Respondents did not lose eligibility for QS when they transferred their partnership interests to the Appellant.

4. Appellant and Respondents are eligible to receive QS in proportion to their respective interests in the dissolved Partnerships.

DISPOSITION

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[15]As previously noted in footnote 4, the qualifying pounds for the Fanning & Sugiura Partnership were all landed in 1987, and the qualifying pounds for the Fanning, Sugiura & Melling Partnership were all landed in 1988.

The Division's IAD, involving a conflict between the Respondents and the Appellant over the allocation of qualifying pounds of halibut and sablefish landed from the F/V NETTIE H, is AFFIRMED. This Decision takes effect on February 18, 1997, unless by that date the Regional Director orders review of the Decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 4:30 p.m. Alaska Standard Time, on the tenth day after the date of this Decision, January 27, 1997. A Motion for Reconsideration must be in writing, must allege one or more specific, material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of the Decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.

James Cufley
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Edward H. Hein
Chief Appeals Officer